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SUPREME COURT, U.S.

No. 1048

IN THE

Supreme Court of the United States

OCTOBER TERM 1964

JOSEPH L. PORESKY

v.

JUDGE WAHLSTROM, ABBEE TALAMO AND MAX GINSBERG

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MASSACHUSETTS

JOSEPH L. PORESKY
99 Mechanic Street
Clinton, Mass.

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v.

Judge Wahlstrom, Abbee Talamo and Max Ginsberg

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF MASSACHUSETTS

To the Honorable Chief Justice and Associate Justices of the Supreme Court of United States.

First I call attention of this Court that in my Bill of Complaint I did not use the word "Equity" or Petitioner-Respondents, in the heading. All I seek is what rightfully belongs to me.

I came here under the 14th amendment. "Due Process of the Law,"—which was denied me. The Mass. Supreme Court consists of seven (7) judges, only five sit as a full court. This violates Chapter 215, Sec. 9 of General Laws as set out by the Brief of the Attorney-General's office, Page 6. Of the five, J. Spiegel first heard the complaint sitting as a single Justice. He was silent when Ginsberg declared that issue had already been decided in the advance sheets of February, 1964, which was not true. J. Spiegel was a member of that Court. He waited seven months before he approved an appeal to the "Full Court," of which he was one of the five.

Another member was Justice Cutler. He was the one who ordered the Bill of Complaint impounded after some delay.

I never saw J. Cutler before. I did not recognize J. Spiegel and when I did, I did not have the courage to protest his presence.

The third member of the "Full Court" was Chief J. Wilkins. He is the sole survivor of the "Full Court," that subscribed to 319 Mass. 717. It cited 251 Mass. 569, 290 U.S. 30, 82 Fed. (2d Ed) 311 and 298 U.S. 654 in support, "any question as to the constitutionality under the Federal Constitution has been set at rest." 251 Mass. 569—if carefully read, will reveal itself a fraud. The three others are dismissals. 82 Fed. (2nd) 311 changes a denial into a dismissal. It is upheld by 298 U.S. 654, eight volumes later, then 290 U.S. 30 which in reality is also a dismissal. What it denied is a Writ of Mandamus.

When I found a dismissal is not a final determination of an issue, I petitioned for reconsideration. It was returned to me on the order of Chief J. Wilkins.

A case rigged by Counsel in the Land Court was defended by me as Special Administrator, before the "Full Court" at Worcester, Mass. Chief J. Wilkens called, "three minutes more" and walked out. Exhibits and certified evidence that a crime had been committed was missing. The other side had new counsel. Counsel listed for the Estate did not appear. One was the one who drew second will. The Land Court barred any moves there. Twice I wrote Chief J. Wilkins. He did not answer. He would not see me.

As Chief Justice, Mr. Wilkins, removed the Honorable J. Leggat as first Judge of the Probate Court and appointed the Defendant, J. Carl Wahlstrom. Hon. J. Leggat was an officer, a combat veteran in World War I. He was man enough as a Probate Judge to fulfill the wish of one cut down on the firing line, that his war risk insurance be awarded to the unwed mother of his child: that he had assigned to his mother.

In the history of this Court there's been one dissent. That was some ten years ago. A challenge to the American Bar Association. The Court as constituted here is tainted. One

Judge was appointed by Ex-Governor Furcolo, who has just been indicted on a twenty-five thousand dollar bribe. Four of the five member Council that confirmed his appointments have been indicted on various counts. Two have already been convicted. The "Full Court of Five", two short of the number as required by statute, biased and otherwise unfit, is not due process of the Law.

In the demurrers it is stressed that my only remedy is by appeal. I did appeal. The appointment of Louis Bedrick as Executor. J. Wahlstrom assured me it was only for purpose of suing the Bonding Co. The Bonding Co. was never sued and my appeal was returned to me twice, after five years and three months. I am in possession. Sued by the Bonding Co. in the Probate Court and Superior Court. It names Louis Bedrick as Trustee and Abbee Talamo, Executor. Louis Bedrick as Executor is advertizing the property at a Sheriff's Sale on May 3, 1965 to satisfy judgment he obtained in the Probate Court. On Nov. 23, 1963 J. Wahlstrom declared Louis Bedrick is not Executor, but had a right to inquire because his name is in the Will. These are all the unrelated facts as charged by the Assistant Attorney-General. I was lulled into security. I can't go back and appeal, for I don't know what has happened, and twenty days time for appeal has expired.

None of the Defendants appeared before the "Full Court." J. Wahlstrom was represented by Mr. Cowin of Attorney-General's office. His Brief reads "That the will gives me a life interest". That is not true. Both wills are included herein. It reads "providing their husbands are not living at the time of my death". He had heart trouble and was being contemptuous of his sisters and their husbands. He had a like clause in the first will, giving me all outright, and if I die before him, the Court appoint a Trustee to hold Estate for Monas Ring till both his parents were dead.

On Page 2 he speaks of interested parties. There was only one. The undertaker, represented by Attorney Norman

Gerald, now Assistant Attorney-General. He and one Kressler entered suit in Worcester District Court. I am not a resident of Worcester, it was transferred to Superior Court. Meanwhile I was taken to the Clinton Hospital and then for operation to the Hahnemann Hospital, Worcester. In spite of fact that an affidavit of no defense was denied, they went the route. I was removed as Executor, Co-Executor and Special Administrator. I was never Co- Executor or Executor and had no notice of such pending action. It ended in a non-suit against me after Talamo, as Executor, settled the case. The lawyer I hired to sue failed to do so. He settled. In acting the way I did I performed a public service.

On March 23, 1963 I filed no accounting or inventory because Louis Bedrick was not Executor. I did receive a "subpoena" to appear with records, etc. I did not. I learned in February 1964 that the safe deposit box had twice been drilled open. I decided that Counsel and J. Wahlstrom were crooked. It was then I filed my Bill fo Complaint. It had no "Equity"—Petitioner or Respondents" in the heading. What the breaf means (R4-5) (R5-6) I don't know. "But in interim" I did file Bill of Complaint. I had nothing else, not being able to appeal.

The use of the word "Equity" is not of my making. The Bill of Complaint did not have it.

Again on Page 3 of the Brief—the Remedy—appeal was denied me. On Page 5, my "Probate experience" was wholly with J. Wahlstrom.

I respectfully say to this Court that the Defendants are crooked and ask that it rule on the Will and declare me sole beneficiary. Massachusetts Supreme Court failed to so rule. J. Wahlstrom, unknown to me, Has done so, twenty days have expired.

JOSEPH L. PORESKY

APPENDIX

BRIEF BY JOSEPH L. PORESKY

COMMONWEALTH OF MASSACHUSETTS

This Bill of Compaint is here, charging the Defendants with being crooked, because I have no other place within the law to go. The defendants file a demurrer. They insist that my only recourse is by appeal. The Bill of Compiaint is true. They have robbed me of my right of appeal. As a kid I attended first grade in Lancaster, and first grade in Clinton. I had impediment of speech. I was in the Class of 1909 Clinton High School. The records set my age at 76. The time element is bad. This Court is all I got. I beg the Court's indulgence.

Since learning of the openings of the safety deposit box, I have not attended any Court hearings.

A judgment for some $48,000 has been entered against me by the "Executor" Louis Bedrick. I had no notice or copy from his counsel, Defendant Ginsberg. A suit against the Bonding Company was brought. On my protest the Executor was ommitted. It likewise prevailed. I lost some $4,000 due to a Record in the Assessor's office in Shrewsbury saying that the Will is broken. I learned of this October 30, 1964. This lead to the loss of two prospects that would have lifted the income some 40%. Failure to get mail addressed to the estate resulted in replacement of the boiler, $1,500. I did not get water liens, Ginsberg was getting the mail. I could not stop him. Clinton Assessors have a copy of the second Will with the notation that I had been removed as Co-Executor, I was never Co-Executor.

In November 1964 Ginsberg entered suit for libel against me for $200,000 in Suffolk Superior Court. This all—after the entering of my Bill of Complaint in this most Honorable Court.

I again ask to be appointed Executor. It has been pending for five years.

JOSEPH L. PORESKY

November 17, 1964

BRIEF BY ATTORNEY-GENERAL'S OFFICE

STATEMENT OF FACTS AND PROCEEDINGS BELOW FILED BY ATTORNEY-GENERAL'S OFFICE.

This is an appeal from a final decree dismissing a bill of complaint, which final decree was entered by the Honorable Jacob Spiegel on June 18, 1964 (R. 13). On March 31, 1964, the petitioner filed in the Supreme Judicial Court for Suffolk County the above-mentioned bill of complaint (R. 1-7).

The bill of complaint contains a variety of statements, many seemingly unrelated. The petitioner apparently alleges as follows: Simeon S. Poresky, brother of the petitioner, died on January 16, 1960, leaving a will (R. 1). The will gave the petitoner a life interest in his brother's estate, with the remainder to vest in two sisters upon the petitioner's death (R. 1). The petitioner and one Louis Bedrick were nominated as co-executors, despite the fact that the petitioner was under a conservatorship at the time (R. 1).

A dispute over the appointment of executors having arisen, the petitioner was named by the Probate Court for Worcester County to be a special administrator to handle the estate during the interim period (R. 2). Interested parties subsequently requested the Probate Court to remove the petitioner as special administrator (R. 2-3). The petitioner was removed in 1962, and Louis Bedrick was appointed executor (R. 3).

On March 26, 1963, a hearing was held in the Probate Court relative to an accounting and inventory filed by the petitioner while he had been special administrator. No final decision on this subject matter appears to have been made (R. 4-5). The petitioner received a subpeona on March 20, 1964, to appear with all the records at the Probate Court

on April 2, 1964 (R. 5-6). In the interim the petitioner filed the present bill of complaint (R. 7).

Demurrers were filed by the respondents on April 22, 1964 and a hearing thereon was held on the same day (R. 7-10). An interlocutory decree sustaining the demurrers was entered by Justice Jacob Spiegel on April 23, 1964 (R. 11), and a final decree dismissing the bill of complaint was entered on June 18, 1964 (R. 13). The petitioner filed a claim of appeal from the final decree on June 25, 1964 (R. 13).

Argument.

1. TO THE EXTENT THAT THE PETITIONER IS AGGRIEVED BY DECISIONS OF A PROBATE COURT, HIS REMEDY IS BY APPEAL PURSUANT TO G.L. C. 215, S. 9, AND HE MAY NOT SEEK RELIEF BY MEANS OF AN ORIGINAL BILL IN EQUITY.

The petitioner apparently has sought to allege in the bill of complaint that he is aggrieved by certain decisions of the Probate Court for Worcester County. The petitioner objects to his removal as special administrator of his brother's estate, and to the refusal of the Court to appoint him sole executor. He is obviously dissatisfied with the proceedings which have taken place in the Probate Court, and now resorts to this Court for relief. Included in the bill of complaint are prayers seeking issuance to the petitioner of an executor's certificate and an order that Carl E. Wahlstrom, Judge of Probate of Worcester County, turn over to the petitioner property allegedly belonging to the latter and unlawfully held by the judge. In addition, the petitioner asks that Judge Wahlstrom and the attorneys involved in the case be enjoined from proceeding further with the matter, and that they be barred completely from the practice of law.

To the extent that the petitioner is aggrieved by determinations made by the Probate Court, his remedy is to be

found, not in a bill in equity, but by means of an appeal pursuant to the provisions of Massachusetts General Laws, c. 215, S. 9.

"A person aggrieved by an order decree or denial of a probate court made after this chapter takes effect, may, within twenty days after the entry thereof, appeal from the same to the supreme judicial court, and the appeal shall be heard and determined by the full court, which shall have like powers and authority in respect thereto as upon an appeal in a suit in equity under the general equity jurisdiction."

G.L. c. 215 Sec. 9, as amended by St. 1947, c. 360.

The Supreme Judicial Court has traditionally held that, when remedies by appeal are provided, such remedies are exclusive, and the appellant may not seek relief by other methods. Appellate remedies are exclusive; they are not intended to serve merely as possible alternatives which may be availed of or ignored as a petitioner desires.

Perkins v. *Bangs*, 206 Mass. 408, 416.

Commercial Credit Corp. v. *Flowers*, 282 Mass. 316, 321.

". . . this court has no duty or right to give (the petitioner) directly relief that . . . could have (been) obtained by appealing . . ."

Turner v. *Morson*, 316 Mass. 678, 688.

The fact that the petitioner failed to file a claim of appeal within the twenty-day period specified by G.L. c. 215, Sec. 9, does not authorize him to substitute another remedy for the one no longer available.

"Where a remedy is created by statute and the time within which and the method according to which it must be pursued are prescribed as conditions under which it can be availed of, the court has no jurisdiction to entertain proceedings for relief begun at a later time or prosecuted in a different method . . ."

International Paper Co. v. *Commonwealth*, 232 Mass. 7, 10.

Having failed to take advantage of the remedy provided by statute, the petitioner cannot now ask this Court to grant the prayers contained in the bill of complaint. This Court in fact lacks jurisdiction to consider the matters raised by the petitioner, since the petitoner did not avail himself of the remedy designated by statute.

International Paper Co. v. *Commonwealth*, supra.

The bill of complaint is quite involved, and allegations are included with little regard for clarity or chronology. The general disorder of the petitioner's pleading prevents the respondents from being clearly approsed as to the claims which are being asserted. However, it appears that the bill of complaint is generally directed to the petitioner's experiences in the Probate Court, and is presumably designed to secure relief for alleged wrongs done him by that tribunal. The petitioner's remedy must therfore be provided by appeal in accordance with G.L. c. 215, Sec. 9. Since relief could not be granted on the basis of the bill of complaint, the single justice properly sustained the demurrers filed by the respondents.

Conclusion.

For the reasons set forth above, the respondent Carl E. Wahlstrom respectfully requests that the final decree dismissing the bill be affirmed.

Respectfully submitted,

/s/ Edward W. Brooke,
Attorney General.
William I. Cowin,
Assistant Attorney General.

Appendix.

GENERAL LAWS, CHAPTER 215, SECTION 9.

"A person aggrieved by an order, decree or denial of a probate court made after this chapter takes effect, may, within twenty days after the entry thereof, appeal from the same to the supreme judicial court, and the appeal shall be heard and determined by the full court, which shall have

like powers and authority in respect thereto as upon an appeal in a suit in equity under the general equity jurisdiction."

FIRST WILL

BE IT REMEMBERED, THAT I, Simeon Poresky of Clinton in the County of Worcester, and Commonwealth of Massachusetts, being of sound mind and memory, but knowing the uncertainty of life, do make this my LAST WILL AND TESTAMENT, hereby revoking all wills and codicils heretofore made by me.

After the payment of my just debts and funeral expenses I give, devise and bequeath as follows:

FIRST: All of my property both real and personal, of whatever kind and description and wherever situated, and to which I may be in any way entitled, I give, devise and bequeath to my brother, Joseph L. Poresky of Clinton, Massachusetts.

SECOND: I hereby nominate and appoint Joseph L. Poresky to be the executor of this, my last will and testament.

THIRD: In case Joseph L. Poresky should predecease me then I direct that my property be given to a trustee to be held in trust for the benefit of my nephew, Monas Ring of Newton, Massachusetts, and to pay the income thereof over to Monas Ring after he becomes twenty one years of age, and after the death of both of his parents the trust is to be terminated, and all the property turned over to the said Monas Ring.

FOURTH: I further request that said trustee be appointed by the Probate Court of Worcester County.

FIFTH: I further request that the executor be exempt from furnishing surety or surities on his official bond.

IN WITNESS WHEREOF, I hereunto set my hand, and in the presence of three witness declare this to be my last will and testament this thirty first day of March 1949.

/s/ Simeon S. Poresgy

On this 31st day of March 1949, Simeon Poresky of Clinton, County of Worcester, and said Commonwealth, signed the forgoing instrument in our presence declaring it to be his last will and testament, and as witnesses thereof we three do now, at his request, and in his presence, and in the presence of each other hereto subscribe our names.

/s/ James F. Brennan
/s/ Elizabeth Boback
/s/ Samuel W ? ? ?

Filed Jan. 20, 1960
Worcester Probate Court
Case #199502

SECOND WILL

BE IT REMEMBERED that I, SIMEON SIMMONS PORESGY of Clinton, in the Commonwealth of Massachusetts, being of sound mind and memory, but knowing the the uncetrainty of this life, do make this my LAST WILL AND TESTAMENT, hereby revoking all former wills by me at any time heretofore made.

After the payment of my just debts and funeral charges, I bequeath and devise as follows:

1. To my son, Robert David Poresgy or Poresky, whose address is unknown to me, I leave the sum of One Dollar ($1.00).
2. To my niece, Betty Lewin, daughter of my deceased sister, Anna P. Lewin, of Malden, Massachusetts, I leave nothing.
3. To my nephews, Louis Bedrick and David Bedrick, sons of my deceased sister, Edith Poresgy, Bedrick, I leave nothing.
4. To my nieces, Bessie Bedrick, whose married name I do not know, and Gertrude Bedrick, daughters of my deceased sister, Edith Poresgy Bedrick, I leave nothing.
5. All the rest, residue, and remainder of my estate, both real, perosnal, and/or equitable, and wheresover situated, I give, devise, and bequeath to my brother, Joseph

Poresgy, for and during his lifetime.
Upon his death, the remainder to my sisters, Hazel Samson and Helen Ring, if they survive me and their husbands are not living at the time of my death, in equal shares for and during their lifetime.
With the entire remainder to my nephew, Monas Ring, son of my sister, Helen Ring.

6. I hereby nominate and appoint Louis Bedrick and Joseph Poresgy to be Co-Executors of this last Will, and request that they be exempt from furnishing any surety or sureties on their official Bond.

In testimony whereof I hereunto set my hand and in the presence of three witnesses declare this to be my last will this twentieth day of January in the year one thousand nine hundred fifty-three.

/s/ Simeon S. Poresgy

On this 12th day of January, A.D. 1953. Simeon Simmons Poresgy of Clinton, Massachusetts signed the foregoing instrument in our presence, declaring it to be his last will: and as witnesses thereof we three do now, at his request, in his presence, and in the presence of each other, hereto subscribe our names.

/s/ Shirley B. Sujiek
/s/ Alexander C. Zellmer
/s/ Harry Zarrow

Case #199502
Filed, Worcester Probate Court January 20, 1960
Allowed: June 9, 1961
Recorded Vol. 1633 Page 257

Commonwealth of Massachusetts
Supreme Judicial Court
County of Suffolk
Clerk's Office, Boston 02108

April 23, 1964

Mr. Joseph Poresky
99 Mechanic Street
Clinton, Massachusetts

RE: *No. 69111 Equity*
Joseph Poresky

v.

Judge Wahlstrom, Abbee Talamo and Max S. Ginsberg

DEAR SIR:

I enclose herewith copy of Interlocutory Decree Sustaining Demurrers which was entered in the above entitled action this date by order of Mr. Justice Spiegel of the Supreme Judicial Court.

Very truly yours,

/s/ JOHN E. POWERS
Clerk, Supreme Judicial Court

JEP/kbk
Enclosure

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT

No. 69111 Equity

JOSEPH PORESKY

VS.

JUDGE WAHLSTROM, ABBEE TALAMO and MAX S. GINSBERG

INTERLOCUTORY DECREE SUSTAINING DEMURRERS

This cause came on to be heard upon the demurrer of the Respondent Carl H. Wahlstrom, the demurrer of the Respondent Abbee Talamo and the demurrer of the Respond-

ent Max S. Ginsberg and was argued by Joseph Poresky, Petitioner, and counsel for the Respondents; and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED and DECREED that said demurrers be, and the same hereby are, sustained.

By the Court, (Speigel, J.)
/s/ JOHN E. POWERS
Clerk

Entered: April 23, 1964

Commonwealth of Massachusetts
Supreme Judicial Court
County of Suffolk
Clerk's Office, Boston

February 8, 1965

Mr. Joseph L. Poresky
99 Mechanic Street
Clinton, Massachusetts

RE: *No. 69111 Equity*
JOSEPH L. PORESKY

vs.

JUSTICE OF WORCESTER COUNTY PROBATE COURT
(CARL E. WAHLSTROM) ETALS

DEAR SIR:

A Rescript was entered today in the above-entitled case which reads as follows:

"Decrees affirmed".

Very truly yours,

/s/ JOHN E. POWERS
Clerk, Supreme Judicial Court

JEP/k

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPREME JUDICIAL COURT

NO. 69183 Equity

JOSEPH L. PORESKY, Petitioner

Vs.

JUDGE WAHLSTROM, ABBEE TALAMO
and MAX S. GINSBERG, Respondents

DECREE DENYING PETITION

This cause came on to be heard on the petition for stay of proceedings filed by Joseph L. Poresky on March 23, 1965 and was argued by Mr. Poresky; and thereupon, upon consideration thereof, it is ORDERED, ADJUDGED and DECREED that the petition be and the same is hereby denied.

By the Court, (Whittemore, J.)

/s/ JOHN E. POWERS
Clerk

Entered: March 24, 1965